

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Frank Montgoris	Team: Squad #13	CCRB Case #: 201801001	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 01/29/2018 8:30 PM	Location of Incident: Outside of § 87(2)(b)	Precinct: 100	18 Mo. SOL 7/29/2019	EO SOL 7/29/2019	
Date/Time CV Reported Mon, 01/29/2018 11:35 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/05/2018 11:04 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Andrew Taormina	30097	955561	100 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Genaro Gabbe	16240	957607	100 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Andrew Taormina	Force: Police Officer Andrew Taormina used physical force against § 87(2)(b)	§ 87(2)(b)

### Case Summary

Captain Courtney Nilan from the 102<sup>nd</sup> Precinct called the IAB Command Center to report a level two use of force, generating log number 18-03931. The CCRB received this case on February 5, 2018.

On January 29, 2018, PO Andrew Taormina and PO Genaro Gabbe, from the 100<sup>th</sup> Precinct, were dispatched to the § 87(2)(b), in Queens, for a violation of an order of protection. PO Taormina forcibly took § 87(2)(b) to the ground (**Allegation A: Force, § 87(2)(g)**). § 87(2)(b) was arrested and charged with § 87(2)(b).

The investigation attempted to obtain video footage from both the § 87(2)(b) and TARU. However, both attempts were unsuccessful, as video footage had already expired. Therefore, no video footage exists for this case. Also, § 87(2)(b) identified an additional witness to this incident only by her first name, § 87(2)(b). However, attempts to identify and contact § 87(2)(b) were ultimately unsuccessful (See IAs).

### Findings and Recommendations

#### **Allegation A – Force: Police Officer Andrew Taormina used physical force against § 87(2)(b)**

It is undisputed that PO Taormina forcibly took § 87(2)(b) to the ground outside of the deli.

§ 87(2)(b) alleged that, when he walked out of the deli, PO Taormina and PO Gabbe approached him. § 87(2)(b) asked what the matter was, and the officers informed him that he had a warrant. PO Taormina immediately grabbed § 87(2)(b)'s left wrist and pulled him down to the ground. § 87(2)(b) denied providing any physical resistance when PO Taormina first grabbed him, and denied placing his right hand inside of his pocket while speaking with the officers. § 87(2)(b) fell to the ground on his stomach and had his right hand tucked underneath his stomach. PO Taormina grabbed at § 87(2)(b)'s right arm for approximately two minutes and handcuffed § 87(2)(b) (Board Review 01).

§ 87(2)(b) § 87(2)(b), provided a phone statement to the CCRB and stated that he called the police on § 87(2)(b) because of an active order of protection that he has against § 87(2)(b). Though § 87(2)(b) denied personally witnessing the officers' interaction with § 87(2)(b) outside the deli, he stated that he had retroactively gone back and checked security footage of the incident, and saw that § 87(2)(b) pull his hands away and “wrestle” with the officers as they tried to handcuff him. § 87(2)(b) was then taken to the ground, but § 87(2)(b) could not describe the interaction any further (Board Review 02).

PO Taormina testified that he informed § 87(2)(b) that he was under arrest for violating the order of protection, and § 87(2)(b) told PO Taormina to “fuck off” and began to walk away. PO Taormina grabbed § 87(2)(b)'s left arm, and § 87(2)(b) tensed his arms and “squared up” by blading his body, and told PO Taormina, “Don’t fucking touch me.” PO Gabbe grabbed § 87(2)(b)'s right arm, and § 87(2)(b) placed his right hand in his right pocket. PO Gabbe ordered § 87(2)(b) to take it out, and § 87(2)(b) ultimately complied. However, § 87(2)(b) kept his body tensed, and the officers were unable to handcuff him. PO Taormina made the decision to take § 87(2)(b) to the ground because he believed it to be the best tactic to effectively handcuff § 87(2)(b) given his resistance. Once § 87(2)(b) was on the ground, PO Taormina handcuffed § 87(2)(b)'s left hand, rolled his body over, and PO Gabbe pulled § 87(2)(b)'s right hand out from underneath his body. § 87(2)(b) was then handcuffed (Board Review 03).

PO Gabbe testified that he and PO Taormina told § 87(2)(b) that he was under arrest, and § 87(2)(b) responded, “No, I’m not,” and stepped back, bladed his body, and took a defensive stance. PO Taormina grabbed § 87(2)(b)’s left arm, and § 87(2)(b) then placed his right hand in his front pants pocket. PO Gabbe grabbed § 87(2)(b)’s right arm and told § 87(2)(b) to take it out of his pocket, but § 87(2)(b) did not comply. PO Gabbe tried to pull § 87(2)(b) towards him, but § 87(2)(b) appeared to stumble and fell towards PO Taormina, causing § 87(2)(b) and PO Taormina to fall to the ground. § 87(2)(b) who was face down on the ground, held his right arm underneath his body. PO Gabbe told § 87(2)(b) to give him his right hand, and pulled at § 87(2)(b)’s arm while saying this. § 87(2)(b) ultimately released his arm after less than a minute, allowing the officers to handcuff him (Board Review 04).

An officer may use force to reasonably ensure the safety of a member of the service or a third person, to take a lawfully arrested person into custody, or to prevent one’s escape from custody. Some factors to consider in determining when to use force are the actions taken by the subject, whether the subject is attempting to evade arrest by flight, and whether the subject is actively resisting. NYPD Patrol Guide, Procedure 221-01 (Board Review 08).

§ 87(2)(g)

§ 87(2)(g)

### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- § 87(2)(b), § 87(2)(c)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
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§ 87(2)(b)
- On April 30, 2018, a Notice of Claim request was submitted with the New York City Comptroller’s Office. That request is still pending, as of the writing of this report (Board Review 06).

### **Civilian and Subject Officer CCRB Histories**

- This is the second CCRB complaint to which § 87(2)(b) has been a party (Board Review 07):

○ § 87(2)(b)

- PO Taormina has been a member-of-service for four years, and has been a subject in two CCRB complaints and four allegations, none of which have been substantiated. [REDACTED]

§ 87(2)(g)

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Squad No.: 13

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date